

Juan C. Chavez, OSB #136428
Brittney Plessner, OSB #154030
Franz Bruggemeier, OSB #163533
Alex Meggitt, OSB #174131
Oregon Justice Resource Center
PO Box 5248
Portland, OR 97208
Telephone: 503-944-2270
Facsimile: 971-275-1839

David F. Sugerman, OSB # 862984
Nadia Dahab, OSB # 125630
Sugerman Law Office
707 SW Washington St Ste 600
Portland OR 97205
Tel: 503-228-6474
Facsimile: 503-228-2556

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

PAUL MANEY; GARY CLIFT; GEORGE NULPH; THERON HALL; DAVID HART; MICAH RHODES; and SHERYL LYNN SUBLET, *individually, on behalf of a class of other similarly situated,*

Plaintiffs,

v.

STATE OF OREGON; KATE BROWN, COLETTE PETERS; HEIDI STEWARD; MIKE GOWER; MARK NOOTH; ROB PERSSON; KEN JESKE; and PATRICK ALLEN,

Defendants.

Case No. 6:20-cv-00570-SB

JOINT STATUS REPORT

Plaintiffs Paul Maney, et. al and Defendants State of Oregon et. al., submit this Joint Status Report regarding the status of defendants' compliance with this Court's order regarding vaccinations of adults in custody ("AICs"):

Updates from defendants:

1. Information on vaccines provided to AICs to date:

- a. During its initial clinics, ODOC offered the Moderna COVID-19 vaccine to 91 AICs as part of the initial 1A population, all of whom accepted.
- b. On January 17, 2021, ODOC offered 1558 AICs the vaccine as part of the expanded 1A population and 1,390 AICs accepted the vaccine.¹
- c. ODOC received 5,000 doses on February 8, 2021, and conducted vaccine clinics throughout the week. These doses were delivered, offered, and administered as follows:

Institution	Delivered	Offered	Administered	Acceptance Rate
OSP	580	649	539	83%
OSCI	330	409	328	80%
TRCI	670	918	648	71%
SRCI	1170	1744	1283	74%
CCCF	480	1077	516	57% ²
SCCI	70	131	72	55%
WCCF	140	198	140	71%
EOCI	670	1201	862	72%
CRCI	210	375	263	70%
SCI	180	234	177	76%
SFFC	60	102	66	65%

¹ This number was thought to be 1,343 at the time of the Motion for Temporary Restraining Order.

² CCCF continued to offer doses after they ran out of vaccine doses. The number actually accepting the vaccine is 618.

PRCF	80	212	92	43%
DRCI	300	403	330	82%
MCCF	80	101	84	83%
Totals for the Week of February 8, 2021				
ODOC	5020	7754	5400 ³	70%

- d. To date, ODOC has been able to offer vaccines to all AICs who are medically vulnerable and where the vaccine is not contraindicated.

2. Information on future vaccines.

- a. Based on an estimated 80% acceptance rate, ODOC had anticipated needing an additional 3,770 first doses to complete its first round of vaccinations, plus a sufficient number of second doses. That estimate will be lowered based on current populations and acceptance rates.
- b. ODOC was scheduled to receive 3,000 doses on February 15, 2020. Those vaccines would have been used for first and second doses for AICs. However, those shipments have been delayed due to weather and, as of the date of this status report, it is not known when they will arrive.

3. Vaccine hesitancy.

- a. The vaccine acceptance rate for the first round of vaccines was 89% and for the current round was 70%. Although many AICs have opted out of vaccines, ODOC has not seen systemic vaccine hesitancy within its population. ODOC reports expected differences in acceptance rate based on vulnerability, age, and demographics. ODOC will have more detailed demographic information available for subsequent reports.
- b. ODOC is seeing lower acceptance rates at two institutions, PRCF and SCCF. ODOC has specifically targeted those institutions for additional education.

³ The total number of doses delivered will be less than the number administered. ODOC is averaging over 10 doses per vial.

- c. As discussed in the declaration of Joe Bugher, ODOC is using an opt-out process with direct patient education. AICs are provided time to ask questions, discuss concerns and meet with a nurse and/or provider before making a final decision to consent or refuse. These efforts are contributing to a higher acceptance rate.
- d. Although ODOC is pleased with the overall vaccine acceptance rate of the AIC population, it will continue to educate AICs who have refused the vaccine and offer it to them as long as clinics are running.

Updates from Plaintiffs:

1. Need for Increased Vaccine Education
 - a. Plaintiffs' counsel and staff have fielded calls about the vaccine rollout. While Plaintiffs are pleased to report that many of the people they have talked to have accepted the vaccine, we are still concerned that a lack of information about the vaccine has allowed misinformation to take hold and has created or exacerbated fear and refusal of the vaccine.
 - b. One woman we spoke to reported that all of the information she knew about the vaccine came from television news. There was one sheet of vaccine information posted in a public area where AICs would have to gather around to read. When called to receive the vaccine, the providers would not answer any questions about the vaccine, but instead would hand the AIC a FAQ. Women with learning disabilities or who distrust ODOC would likely not find this comforting or adequate medical advice. This AIC reported that of the women who did not receive the vaccine, many did so because of the lack of information about its benefits and safety. Other AICs at OSCI have reported that the vaccine information provided on slides on the internal TV channels moves too quickly for many people to read, and that that was the only means of providing vaccine information to AICs.

- c. Another common point of misinformation the men have received is that the vaccine will make them sterile. Again, this would tend to indicate that not enough has been done to educate the AICs about the benefits and safety of the vaccine.
- d. We have heard one report of a medically vulnerable AIC being told that he was “too healthy” to receive the vaccine. The AIC is young, but still medically indicated to have a co-morbidity with COVID-19. This has since been rectified with assistance of his post-conviction relief attorney. We have also heard from others who believe that they are more vulnerable to serious COVID-19 infection who have not yet been provided their first shot while others around them have been.
- e. Some facilities have devised plans for vaccinations that do not make sense to the AICs. For instance, at one facility the vaccine is being offered unit by unit, regardless of vulnerability.⁴
- f. We have also heard that some of the men feel coerced into getting the vaccine—for example, being told that they will not be able to have visitation unless they take the vaccine. Some AICs believe that they will be shipped to a facility to live with other unvaccinated AICs. Some have been told by ODOC staff that that will happen.
- g. Some AICs have reported severe-feeling side effects from the vaccine. From Plaintiffs’ understanding, this is partly expected result with vaccinations.⁵ However, the AICs experiencing these side effects did not expect them, leading to suspicions that the vaccines are sub-standard, experimental, or expired. The people experiencing these side effects may not want the second vaccine, which reportedly causes more severe side effects than the first.

⁴ Plaintiffs are not commenting on the prudence of this but offer as an example of areas for better education and communication.

⁵ *What to Expect after Getting a COVID-19 Vaccine*, Center for Disease Control and Prevention (Feb. 12, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/expect/after.html>

- h. AICs are asked screening questions at the time that they are offered the vaccine, but AICs report that the medical staff do not explain anything about why the questions are asked or why the AIC's answers do or do not affect the safety of the vaccination for them. Medical staff are unable or unwilling to answer AIC questions at the time the vaccine is offered.
- i. Plaintiffs' counsels have heard that a medically vulnerable person who twice opted out of the vulnerable round of vaccine administration because of lack of information was given a paper to sign each time. Both times, he attempted to read the paper before signing, was told to just sign it, and then had the paper taken away before he could read and sign it. AICs are also reporting that they are not being told that they will be offered the vaccine again after initially refusing it.
- j. Plaintiffs acknowledge and partly expected some degree of institutional distrust leading to vaccine hesitancy. Plaintiffs' counsel discussed this with Defendants' counsel and learned that more direct provider follow-ups happen for persons who do not accept the vaccine when offered. The follow-ups are appreciated, but Plaintiffs would like to emphasize the importance of this information being conveyed and digested by the AICs long before they arrive at the vaccination clinic—whether it be about the vaccine's efficacy, safety, or side effects. We asked that ODOC rectify this by allowing for more direct provider discussion about the vaccine—its efficacy and safety—and to provide more information about the manner in which ODOC is distributing the vaccine. ODOC must provide more information in advance about the vaccine in general and specifically about expected side effects that many throughout the world are experiencing, making it clear that the side effects are not signs of COVID-19 infection or other harmful effects. It is vital that AICs have confidence in ODOC's competency and interest in their safety.

- k. OHA has reported that four persons have contracted COVID-19 following vaccine.⁶ This is expected given the efficacy rate of the vaccine, but our expectation is that ODOC communicates that the vaccine will not prevent all infections from turning into serious illness, ensures that their facilities continue to operate under the presumption that the vaccine will not protect everyone, and maintains other COVID-19 preventative measures until the pandemic is over.
- l. Plaintiffs have begun rolling out their own Vaccine FAQ, *see attached*, that we have provided to our advocacy and attorney partners for mailing and distribution.
- m. Defendants' counsel informed us about the delays following the ice storms across the State and country. We will continue to monitor the situation.

Litigation Updates:

- 1. The parties are scheduling additional depositions for March.

Jointly submitted by the parties on February 16, 2021.

/s/ Juan C. Chavez
JUAN CHAVEZ
DAVID SUGERMAN
NADIA DAHAB
ALEX MEGGITT
FRANZ BRUGGEMEIER
Attorneys for Plaintiffs

/s/ Andrew Hallman
TRACY ICKES WHITE
ANDREW HALLMAN
YUFENG LUO
Assistant Attorneys General
Of Attorneys for Defendants

⁶ Erin Ross, *4 Oregonians test positive for COVID-19 despite being vaccinated*, Oregon Public Broadcasting (Feb. 16, 2021), available at <https://www.opb.org/article/2021/02/12/oregon-covid-19-vaccine-breakthrough-infections/>